Texas Department of Transportation

Procurement Division

Contract Terms and Conditions

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CONTRACT TERMS AND CONDITIONS

ARTICLE I. PERFORMANCE OF THE CONTRACT

Section I.01 COMPLIANCE WITH LAWS.

a) Vendor must comply with (1) all federal, state, and local laws (including without limitation rules, regulations, and guidance) as they currently exist and as amended throughout the Contract Term, and (2) the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contract performance (collectively, "Law").

b) Any alterations, additions, or deletions to the terms of the Contract that are required by changes in Law are automatically incorporated into the Contract without written amendment and shall become effective on the date designated by the applicable Law. TxDOT may unilaterally issue a Contract Amendment reflecting any automatic amendments that occur pursuant to this section.

c) Vendor must maintain all licenses and certifications required by Law or by the Contract throughout the Contract Term.

d) Vendor must furnish TxDOT with satisfactory proof of its compliance with the requirements of this section promptly, within five (5) business days, upon request. For purposes of this Contract, "Business Days" shall mean days on and between Mondays and Fridays, excluding any state of Texas recognized holidays or US national holidays.

Section I.02 SUBCONTRACTING.

a) Vendor may not enter into any agreement with a third party (a "Subcontractor") to perform any portion of the Work (a "Subcontract") unless (1) specifically allowed by the Contract, or (2) Vendor obtains written approval from TxDOT.

b) Vendor is solely responsible for the Work. Vendor must ensure that any Subcontractor complies with all provisions of the Contract. Any act or omission by a Subcontractor shall be deemed an Event of Default by Vendor.

Section I.03 DELIVERY AND PERFORMANCE.

a) Vendor must provide all labor, material, and equipment necessary to perform the Work throughout the Contract Term.

b) If Vendor expects that delivery or performance will be delayed beyond the required date, Vendor must promptly, within five (5) Business Days, notify TxDOT by email. TxDOT may extend the required date for delivery or performance in its sole discretion by issuing a unilateral Contract Amendment.

c) Vendor must ship all Goods FOB Destination. "FOB Destination" means Vendor retains ownership and bears the risk of loss until the Goods are delivered to TxDOT in accordance with the terms of this Contract. Vendor is responsible for all shipping costs and liabilities. Vendor must prepay all freight charges (including, without limitation, shipping, handling, delivery fees, and fuel surcharges), and such charges shall not be billed separately or passed through to TxDOT.

d) Delivery of Goods or Services does not constitute acceptance by TxDOT. Unless otherwise specified in the Statement of Work, Goods or Services will be considered accepted on the earlier of the dates (1) full payment for the Goods or Services is made, or (2) TxDOT delivers notice of acceptance to Vendor.

e) Goods must be properly packaged. Damaged Goods will not be accepted.

Section I.04 NONCOMPLIANT GOODS.

TxDOT will notify Vendor of the delivery of damaged or otherwise noncompliant Goods. If Vendor fails to remove the Goods from TxDOT's property within 10 Business Days (or other deadline agreed upon by the Parties), TxDOT may dispose of them at TxDOT's discretion and at Vendor's expense, including without limitation returning the Goods to Vendor.

Section I.05 INSPECTIONS AND TESTS.

a) TxDOT may test and inspect the Goods and Services to ensure compliance with the Statement of Work. TxDOT may also test and inspect Goods before they are purchased under the Contract.

b) Goods and Services will be subject to inspection and testing by TxDOT at all times and places, including, without limitation, Vendor's place of business. To the extent practical, the inspections will not disrupt Vendor's daily operations. TxDOT reserves the right to inspect Goods at a reasonable time after delivery if inspection of the Goods at the time of delivery is not feasible or convenient for TxDOT. Designated TxDOT representatives may conduct unannounced visits to inspect Vendor's and any Subcontractor's facilities during normal business hours to monitor Contract compliance or carry out performance audits of the Services.

Section I.06 CORRECTIONS TO WORK.

If TxDOT requires Vendor to correct Work due to errors made by Vendor, Vendor must correct the Work at no additional cost to TxDOT.

Section I.07 VENDOR PERFORMANCE REPORTING.

TxDOT may review Vendor's performance under the Contract as described in Government Code §2155.089.

Section I.08 CONTRACT MANAGEMENT AND ADMINISTRATION.

a) TxDOT will designate an individual to serve as the Contract manager (the "Contract Manager").TxDOT may change the Contract Manager at any time with notice to Vendor.

b) Administration of the Contract is a joint responsibility of the Contract Manager and the Purchaser.

(1) The Contract Manager shall be the point of contact between TxDOT and Vendor for issues regarding delivery of Goods, performance of Services, and submission of invoices.

(2) The Purchaser shall be the point of contact between TxDOT and Vendor for all issues related to the administration of the Contract, including but not limited to, amendments, renewals, interpretation, and breaches of the Contract.

c) The Contract Manager does not have any express or implied authority to vary the terms of the Contract, amend the Contract in any way, or waive strict

performance of the Contract. The Contract Manager's responsibilities include, but are not limited to:

(1) Monitoring Vendor's progress and performance and ensuring Work conforms to the requirements of the Contract.

(2) Issuing work authorizations, reviewing invoices, and approving payments.

(3) Meeting with Vendor as needed to review progress, discuss problems, and consider necessary action.

Section I.09 INTELLECTUAL PROPERTY.

a) All intellectual property developed and created in the course of performance of the Contract are works made for hire, and all intellectual property rights, including but not limited to, publication rights, copyrights, trademarks, patents, and trade secrets to all products and materials developed and created pursuant to the Contract, shall be exclusively owned by TxDOT. Vendor must provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the Contract. To the extent that title to any work created under the Contract is held by operation of law to not vest exclusively in TxDOT, such work is hereby irrevocably assigned to TxDOT. To the extent that an assignment is ineffective from the Vendor (including any of its contractors), Vendor hereby grants to TxDOT a fully paid-up, irrevocable, royalty-free, worldwide license and right to use such intellectual property.

b) Vendor must ensure that TxDOT's intellectual property rights, including, but not limited to, publication rights, copyrights, trademarks, patents, and trade secrets, are secured from all suppliers, contractors, and Subcontractors.

c) When applicable, Vendor must obtain necessary licenses, copyrights, trademarks, or patents for TxDOT's use.

d) Vendor agrees that it will not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining

registrations for copyrights, trademarks, trade secrets, or patents for any intellectual property developed in performance of the Contract.

e) VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TXDOT AND THE STATE FROM THIRD PARTY CLAIMS ASSERTING INTELLECTUAL PROPERTY INFRINGEMENT OF A THIRD PARTY'S LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, OR ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS THEY RELATE TO THE GOODS OR SERVICES DELIVERED UNDER THIS CONTRACT.

ARTICLE II. VENDOR AFFIRMATIONS

Section II.01 SURVIVAL.

The representations, warranties, covenants, and certifications contained in the Contract shall survive the expiration or termination of the Contract.

Section II.02 REPRESENTATIONS, WARRANTIES, COVENANTS, AND CERTIFICATIONS.

Vendor represents warrants, covenants, and certifies that:

a) False Statements: all information contained in the Response or provided under the Contract is accurate and complete.

b) GRATUITIES: Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.

c) PARTICIPATION IN SOLICITATION: under Section 2155.004(b) of the Government Code, the individual or business entity named in the Contract is not ineligible to receive the Contract.

d) ANTITRUST LAWS: in accordance with Government Code §2155.005, neither Vendor nor any representative of Vendor has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15, of the Texas Business and Commerce Code or the federal antitrust laws, or (2) communicated the contents of the Response directly or indirectly to any competitor or any other person engaged in the same line of business as Vendor.

e) CHILD SUPPORT: Vendor and any other individual or business entity named in the Contract are not ineligible to receive payment under this Contract under Family Code §231.006.

f) CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR: under Government Code §669.003, Vendor does not employ, or disclose in its Response, the current or any former executive director of TxDOT.

g) SUSPENSION AND DEBARMENT: neither Vendor nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.

h) NEPOTISM DISCLOSURE:

(1) If Vendor learns at any time that an employee of Vendor or of a Subcontractor has a relative who is employed by TxDOT, Vendor must notify TxDOT within 30 calendar days of obtaining that knowledge.

(2) In this section, the term "relative" means:

(a) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, sibling's spouse, niece or nephew, spouse, child, child's spouse, grandchild, or great grandchild.

(b) The grandparent, parent, sibling, child, or grandchild of the person's spouse.

(3) A notification required by this section must be submitted: (a) in the manner required for notices under this Contract and (b) by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701.The notice must include Vendor's name, the Contract number, the name of the Vendor or Subcontractor employee, the expected role of the Vendor or Subcontractor employee on the project, and the name and title of the related TxDOT employee.

i) EXCLUDED PARTIES: Vendor is not listed in the prohibited vendors list authorized by Executive Order No.13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,"

published by the United States Department of the Treasury, Office of Foreign Assets Control.

j) PRIOR DISASTER RELIEF CONTRACT VIOLATION: the individual or business entity named in the Contract is not ineligible to receive the Contract under Government Code §§2155.006 and 2261.053.

k) ABORTION PROVIDER: Vendor is not an abortion provider or an affiliate of an abortion provider under Government Code §2273.003.

l) LOBBYING: TxDOT's payments to Vendor and Vendor's receipt of appropriated funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Government Code.

m) ENTITIES THAT BOYCOTT ISRAEL: Vendor either:

(1) does not, and will not for the duration of the Contract, boycott Israel, or

(2) the verification required by Section 2271.002 of the Government Code does not apply to the Contract.

n) FOREIGN TERRORIST ORGANIZATIONS: Vendor is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code §2252.152.

o) CRITICAL INFRASTRUCTURE: pursuant to Government Code Section 2275.0102, neither Vendor nor its parent company, nor any affiliate of Vendor or its parent company, is (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor of Texas under Government Code Section 2275.0103, or (2) headquartered in any of those countries.

p) CONTRACTING INFORMATION RESPONSIBILITIES: Vendor must comply with the requirements of Section 552.372(a) of the Government Code and any other applicable requirements of Subchapter J, Chapter 552 of the Government Code. Vendor acknowledges that the requirements of Subchapter J, Chapter 552 of the Government Code may apply to the Contract.

q) HUMAN TRAFFICKING PROHIBITION: the individual or business entity named in the Contract is not ineligible to receive the Contract under Government Code §2155.0061.

r) NO CONFLICTS OF INTEREST: the provision of Goods and Services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

s) FINANCIAL CONDITION: Vendor is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital and resources to perform the Work.

t) BANKRUPTCY: Vendor is not the subject of any pending bankruptcy petition.

u) AUTHORIZATION TO CONDUCT BUSINESS IN TEXAS: Vendor is legally authorized to conduct business in Texas and, if required, is registered with the Texas Secretary of State.

v) TAXES: Vendor is current on all taxes and fees applicable to Vendor, including without limitation income and franchise taxes.

w) COVID VACCINE PASSPORTS: the individual or business entity named in the Contract is not ineligible to receive the Contract under Health and Safety Code §161.0085.

x) FIREARM AND AMMUNITION DISCRIMINATION: pursuant to Government Code §2274.002, to the extent applicable to Vendor and the Contract, Vendor:

(1) Does not have practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and

(2) Will not discriminate during the Contract Term against a firearm entity or firearm trade association.

y) E-VERIFY: pursuant to Executive Order RP-80, if the Work includes the performance of Services, Vendor shall, to the extent permitted by law, utilize the United States Department of Homeland Security’s E-Verify system during the Contract Term to determine the eligibility of:

(1) All persons employed by Vendor during the Contract Term to perform duties within the state of Texas, and

(2) All persons, including Subcontractors, assigned by Vendor to perform work pursuant to the Contract within the United States of America.

z) ENERGY COMPANY BOYCOTTS: either (1) Vendor does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Government Code §2276.002 does not apply to the Contract.

aa) STATE OFFICERS AND EMPLOYEES: pursuant to Government Code §572.069, Vendor has not employed and will not employ a former state officer or employee who, during the period of state service or employment, participated in a procurement or contract negotiation involving Vendor within two years after the date the Contract was signed or the procurement was terminated or withdrawn.

bb) NO FELONY CRIMINAL CONVICTIONS: neither Vendor nor any of Vendor's employees, agents, representatives, Subcontractors or Subcontractors' employees has been convicted of a felony criminal offense or if such a conviction has occurred, Vendor has fully advised TxDOT in writing of the facts and circumstances surrounding the conviction.

cc) NO INFRINGEMENT: use or sale of any Goods, except (with respect to patents) Goods produced by TxDOT's detailed design, will not infringe any adverse valid patent, copyright, trademark, or other intellectual property right.

dd) SURVEILLANCE TARGETING: Vendor will not directly or indirectly:

(1) engage in surveillance targeting:

(a) a member of the State legislature or a person employed to support the State legislature in any capacity;

(b) a family member of a person described in subsection (1);

(c) a state agency employee; or

(d) an individual making a complaint or raising concerns regarding State agency operations or contracting.

(2) engage in an act of intimidation, coercion, extortion, undue influence, or other similar conduct intended to influence, silence, or retaliate against a person described in subsection (i) above, or

(3) use private or confidential information to manipulate or influence a State contracting decision or proceeding.

ee) EXECUTIVE ORDER GA-48: pursuant to Executive Order GA-48, neither it, nor its holding companies or subsidiaries, is:

(1) Listed in Section 889 of the 2019 National Defense Authorization Act;

(2) Listed in Section 1260H of the 2021 National Defense Authorization Act; or

(3) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4; or

(4) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4.

Section II.03 INACCURACIES.

a) Vendor must promptly notify TxDOT if any representation, warranty, covenant, or certification in this Article was inaccurate when made, has become inaccurate, or is no longer true or complete.

b) Vendor acknowledges that TxDOT may terminate the Contract, withhold payment and exercise any other remedy if any representation, warranty, covenant, or certification in this Article is, at any time during the Contract Term, untrue, inaccurate, or breached.

ARTICLE III. PAYMENT

Section III.01 INVOICING.

In order to receive payment, Vendor must submit a detailed, complete, and correct invoice for payment that complies with the following requirements.

a) Invoices shall be submitted by Vendor directly to TxDOT and shall be issued in compliance with Chapter 2251, Texas Government Code. Vendor must send an electronic copy of the invoice as an email attachment to the email address for submission of invoices under the Contract. If Vendor is unable to submit invoices electronically as an email attachment, Vendor must mail a hard copy to the physical address for notices under the Contract. A link to a copy of the invoice will not be accepted in lieu of an electronic or physical copy of the invoice.

b) The invoice must include:

(1) Vendor name and address.

(2) Vendor invoice remittance address.

(3) Employer Identification Number (EIN), federal tax I.D., or a valid Texas Identification Number (TIN).

(4) Complete 15-digit Contract number or, if applicable, the Blanket PO Release number.

(5) Name, telephone number, and email address of person designated to answer questions regarding the invoice.

(6) Description of Good or Service as it appears in the Contract or Price Schedule in the same order as listed in the Contract or Price Schedule. Item numbers must correspond with the item numbers on the Contract or Price Schedule.

(7) Quantity, unit of measure, unit price, and extended price of each line item, if applicable, consistent with the Price Schedule.

(8) Grand total.

(9) Shipment date of Goods or date of Service.

(10) If lease, include payment number (e.g., 1 of 36).

(11) Bill of lading for freight charges, if applicable.

(12) Ship-to address or location where Services were provided.

(13) Any additional requirements set forth in the Contract.

Section III.02 METHOD OF PAYMENT.

a) TxDOT will make payments due under this Contract by direct deposit if Vendor has provided a direct deposit authorization form to TxDOT. Vendor may obtain the authorization form from TxDOT.

b) If Vendor has not delivered an authorization form to TxDOT, TxDOT will make payments by warrant.

Section III.03 TIME OF PAYMENT.

Payment will be made in accordance with Government Code Chapter 2251.

Section III.04 DEBT TO THE STATE.

Vendor agrees that any payments due under the Contract will be applied toward any debt or delinquency that is owed to the state of Texas.

Section III.05 OFFSET.

Vendor agrees that TxDOT may offset any amount due to TxDOT under this Contract against any payment owed to Vendor under this Contract.

Section III.06 PAYMENT OF SUBCONTRACTORS.

As provided by Government Code §2251, Vendor must pay a Subcontractor the appropriate share of any payment Vendor receives from TxDOT not later than the 10th day after the date Vendor receives the payment. The appropriate share is overdue on the 11th day after the date Vendor receives the payment.

Section III.07 REFUNDS for Overpayment.

If TxDOT overpays Vendor, Vendor must refund the amount of the overpayment within 30 calendar days of notice of the overpayment. At its option, TxDOT may offset and deduct the amount of the overpayment from any amount owing rather than requesting a refund.

Section III.08 NO MINIMUM.

TxDOT makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the Contract.

Section III.09 TAXES.

Vendor must pay all taxes or similar amounts related to the Contract. TxDOT will not be liable for any taxes resulting from the Contract. TxDOT will provide tax exemption certificates to Vendor upon request to evidence applicable exemptions to state and federal taxes.

Section III.10 TRAVEL.

Unless specifically provided for in the Statement of Work, Vendor must bear the cost of any travel required to perform the Work.

Section III.11 CHANGES TO PRICE.

a) Vendor may request an adjustment (a "Price Adjustment") to the current unit price of one or more line-items on the Price Schedule (the "Current Unit Price") based on a change in circumstances affecting the cost of performing the Work, to the extent such change is reflected in the Index. Vendor may request a Price Adjustment only at the frequency permitted under the Contract. Vendor must make any such request (a "Price Adjustment Request") in writing. Each Price Adjustment Request must include, for each line item for which a Price Adjustment is being requested: (i) a description of the change in circumstances justifying the Price Adjustment, (ii) documentation demonstrating the change in the Index value, (iii) the total price of the line item after the Price Adjustment (the "Adjusted Price"), and (iv) a calculation of the Maximum Adjusted Price. A Price Adjustment Request that does not meet these requirements will not be considered. TxDOT may approve or deny any Price Adjustment Request in its sole discretion.

b) The percentage by which a line item can be adjusted (the "Adjustment Percentage") will be calculated as follows:

(1) Adjustment Percentage = (B-A) ÷ A x 100, where:

(a) A = The Index value for the later of (i) the month in which the Response was submitted, or (ii) the month of the last approved Price Adjustment Request for the line item being adjusted, and

(b) B = The Index value for the month in which Vendor submits the Price Adjustment Request to TxDOT.

(2) The Adjustment Percentage shall be rounded to the nearest one-hundredth of one percent (0.01%).

c) Maximum Adjusted Price.

(1) The maximum allowable price for each line item subject to a Price Adjustment (the "Maximum Adjusted Price") will be calculated as follows:

Maximum Adjusted Price = Current Unit Price x [1 + (Adjustment Percentage ÷ 100)].

(2) Vendor may request an Adjusted Price that is lower than the Maximum Adjusted Price, but in no event shall the Adjusted Price exceed the Maximum Adjusted Price.

d) Upon approval of a Price Adjustment Request, TxDOT may unilaterally issue a Contract Amendment to update the Price Schedule to reflect the approved Adjusted Price.

Section III.12 TARIFFS.

a) Vendor agrees that any costs attributable to a tariff in existence on the Effective Date are included in the prices set forth in the Price Schedule.

b) Vendor may request that the price of one or more line-items on the Price Schedule be increased to reflect the enactment of a new tariff or an amendment to an existing tariff (a "Tariff Event") that occurs during the Contract Term and which affects the cost of supplying Goods under the Contract (a "Tariff Adjustment Request").

c) A Tariff Adjustment Request must be in writing. Each Tariff Adjustment Request must include (1) the amount of the price increase being requested (the "Tariff Adjustment") and the amount of the line item after the Tariff Adjustment (the "Tariff Adjusted Price"); and (2) documentation describing the effective date, amount, and scope of the Tariff Event. Vendor must demonstrate with specificity

the direct and material effect of the Tariff Event on its necessary and reasonable cost of supplying Goods under the Contract, including its commercial reasons for using a source subject to the tariff in question.

d) TxDOT may approve or deny any Tariff Adjustment Request in its sole discretion. Upon approval of a Tariff Adjustment Request, TxDOT may unilaterally issue a Contract Amendment to update the Price Schedule to reflect the approved Tariff Adjusted Price.

e) If a Tariff Adjusted Price is approved, Vendor must monitor the tariff that is the subject of the Tariff Event and notify TxDOT within five (5) Business Days of any change to the tariff such as repeal or reduction (a "Tariff Change"), in which case TxDOT may unilaterally adjust the Tariff Adjusted Price to an amount not less than the price before the Tariff Adjustment, and may recover any overpayments made after the effective date of the Tariff Change.

ARTICLE IV. CHANGES TO THE CONTRACT

Section IV.01 AMENDMENTS.

a) This Contract may be amended only by a written amendment signed by both Parties and issued by the Purchaser, or, where the Contract expressly authorizes, by a written unilateral amendment issued by the Purchaser (such mutual or unilateral amendment, a "Contract Amendment"), or by automatic amendment provided by this Contract due to a change in Law.

b) Vendor will not be entitled to payment for any additional goods, services, or work that have not been previously authorized by a Contract Amendment.

c) No substitutions or cancellations will be permitted without written approval from TxDOT in the form of a Contract Amendment.

Section IV.02 ANCILLARY DOCUMENTS.

Vendor shall not submit an agreement or other document that would affect the Work (an "Ancillary Document") to TxDOT for execution. Vendor must seek TxDOT's agreement to any terms and conditions related to the Work through a Contract Amendment. TxDOT shall not be deemed to have accepted or agreed to any terms contained in an Ancillary Document unless expressly incorporated into the Contract through a Contract

Amendment. Any signature by a TxDOT employee or agent to an Ancillary Document shall not be valid. Submission of an Ancillary Document in violation of this Section shall constitute an Event of Default.

Section IV.03 SALE OR ASSIGNMENT.

Vendor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from TxDOT. Any attempted assignment in violation of this provision is void and without effect.

Section IV.04 CHANGE OF INFORMATION.

Vendor must provide written notification of changes to Vendor's company name and contact information to TxDOT as soon as possible but not later than 30 calendar days from the date of the change. TxDOT may unilaterally issue a Contract Amendment reflecting the changes.

ARTICLE V. RIGHT TO AUDIT

Section V.01 STATE AUDITOR.

The state auditor may conduct an audit or investigation of Vendor or any other entity or person receiving funds from the state directly under the Contract or indirectly through a Subcontract. The acceptance of funds directly under the Contract or indirectly through a Subcontract act as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Vendor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Section V.02 TXDOT AUDITOR.

TxDOT's auditors may conduct an audit or investigation of Vendor or any other person receiving funds directly under the Contract or indirectly through a Subcontract. TxDOT has the right to audit Vendor's books and records during normal work hours. Vendor or any other entity that is the subject of an audit or investigation by TxDOT must provide TxDOT's auditor with access to any information TxDOT considers relevant to the investigation or audit.

Section V.03 SUBCONTRACTS.

Vendor must ensure that this section concerning the authority of the state auditor and TxDOT to audit funds received indirectly by Subcontractors through Vendor and the requirement to cooperate is included in any Subcontract awards.

ARTICLE VI. INDEMNIFICATION AND LIABILITY

Section VI.01 ACTS OR OMISSIONS.

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

SECTION VI.02 INFRINGEMENT.

a) VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS INVOLVING VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE AND SERVICE MARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED

SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT; AND/OR (3) TXDOT'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDOT BY VENDOR OR OTHERWISE TO WHICH TXDOT HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL.IN ADDITION, VENDOR WILL REIMBURSE TXDOT AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM.IF TXDOT DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TXDOT IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDOT WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TXDOT'S COUNSEL.

b) VENDOR WILL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED BY:

(1) INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TXDOT FROM A THIRD PARTY UNRELATED TO THE VENDOR OR THE PRODUCTS PROVIDED OR THE SERVICES PERFORMED UNDER THE CONTRACT, OR

(2) USE OF THE PRODUCT OR SERVICE BY TXDOT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT BETWEEN VENDOR AND TXDOT.

c) IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TXDOT PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM,

VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TXDOT, MUST), AT VENDOR'S SOLE OPTION AND EXPENSE:

(1) PROCURE FOR TXDOT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR

(2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH A FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TXDOT'S USE IS NON-INFRINGING.

SECTION VI.03 TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE.

a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES, OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT.VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION.TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.

b) VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT.VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS.THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A

DEFENDANT IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL.VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Section VI.04 DAMAGE TO TXDOT PROPERTY.

Vendor shall be liable for damage to TxDOT's property, including equipment, workplace, and its contents, resulting from an act or omission of Vendor or Vendor's employees, agents, Subcontractors, or suppliers.

ARTICLE VII. PUBLIC DISCLOSURES

Section VII.01 PUBLIC INFORMATION ACT.

a) Information, documentation, and other material in connection with the Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

b) In accordance with §2252.907 of the Government Code, Vendor is required to make any information created or exchanged with the State pursuant to the Contract and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

c) If Vendor receives a request for information under Chapter 552 of the Texas Government Code from a member of the public that concerns the Contract, Vendor shall direct the member of the public to submit the request directly to TxDOT for processing.

Section VII.02 CONFIDENTIALITY.

a) All information created by or accessible to Vendor while providing a Good or Service for TxDOT shall be treated by Vendor as confidential.

b) Vendor and its employees or Subcontractors must not divulge any information related to TxDOT business at any time to a third party without the prior written approval of TxDOT.

c) No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of the TxDOT.

Section VII.03 PROVISION OF INFORMATION.

Within five (5) Business Days of a request by TxDOT, Vendor agrees to provide any information created or exchanged with the state pursuant to the Contract to TxDOT in any format reasonably required by TxDOT including, without limitation, portable document format (PDF), and HTML.

ARTICLE VIII. INSURANCE

Section VIII.01 MAINTAIN INSURANCE.

Vendor must maintain the insurance coverage set forth in the Insurance Requirements throughout the Contract Term.

Section VIII.02 PROOF OF INSURANCE.

Vendor must provide proof of insurance in the form and with the content specified in the Insurance Requirements within five (5) Business Days of (i) a request by TxDOT, (ii) each renewal or replacement of any required insurance policy, and (iii) any modification to a required insurance policy that changes information contained in the proof of insurance most recently submitted to TxDOT.

ARTICLE IX. VENDOR FINANCES

Section IX.01 GOOD STANDING.

Vendor must maintain the legal right to transact business in Texas during the Contract Term. If Vendor is required by law to register with the Texas Secretary of State, Vendor must maintain such registration throughout the Contract Term.

Section IX.02 TAXES.

Vendor must remain current on all applicable taxes and fees during the Contract Term including, without limitation, any franchise tax obligations.

ARTICLE X. VENDOR PERSONNEL

Section X.01 PERSONNEL.

For purposes of this Contract, the term "Personnel" means any individual performing Work including, without limitation, ANY employee, agent, officer, or subcontractor of Vendor or of a Subcontractor, or collectively, all such individuals.

Section X.02 INDEPENDENT CONTRACTOR

It is expressly understood and agreed to by both Parties that TxDOT is contracting with Vendor as an independent contractor. As such, Vendor understands and agrees that Personnel are not state employees and that Vendor will be responsible and liable for the safety, injury, and health of Personnel while such Personnel are performing Work for TxDOT. Vendor may not make a claim against TxDOT for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment benefits, or any other employee benefits of any kind. Should Vendor subcontract any of the Work, Vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any Subcontractor of Vendor. In no event will this provision relieve Vendor of the responsibility for ensuring that performance rendered under all Subcontracts are rendered in compliance with the Contract

Section X.03 PERSONNEL REQUIREMENTS.

Personnel must be competent, knowledgeable, experienced, and, if applicable, licensed in the types of Services to be provided under the Contract and perform such Services in a professional and workmanlike manner consistent with industry standards. All Personnel must be a minimum of seventeen (17) years of age, experienced in the type of work to be performed, and be well-groomed and appropriately dressed when on TxDOT property. No visitors, wives, husbands, children, or other relatives of Personnel will be allowed on state property during working hours, unless they are bona fide employees of Vendor or a Subcontractor.

Section X.04 REPLACEMENT OF PERSONNEL.

If TxDOT determines that any Personnel is unable to perform the Work or to communicate effectively or is, in the opinion of TxDOT, otherwise objectionable, Vendor must immediately remove that Personnel.

Section X.05 ALCOHOL, DRUG, AND SMOKE-FREE WORKPLACE.

TxDOT is committed to maintaining an alcohol and drug-free workplace. If any Personnel (a) possesses, uses, or is under the influence of alcohol or a controlled substance while in the performance of Work or while on TxDOT premises, or (b) violates TxDOT's policy prohibiting smoking in TxDOT buildings, Vendor shall be in default under the Contract.

Section X.06 ENGLISH-SPEAKING STAFF.

Vendor must ensure that at all times a minimum of one English-speaking Personnel is present at the job site.

Section X.07 VENDOR TITLE VI AFFIRMATIONS.

Vendor represents and warrants the following with regard to the Work performed by it under the Contract:

a) Vendor and its Subcontractors shall not discriminate on the grounds of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, or disability in the performance of this Contract including, without limitation, in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. Vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by Vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the Contract or such other remedy as TxDOT deems appropriate.

b) In any solicitations for Subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by Vendor for work to be performed under a Subcontract, each potential Subcontractor or supplier shall be notified by Vendor of Vendor's and Subcontractor's obligations under its Contract relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

c) During the performance of this Contract, Vendor, for itself, its assignees, and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor will comply with the acts and the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the acts and regulations, including employment practices, when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier will be notified by the contractor of the contractor's obligations under this Contract and the acts and regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor must provide all information and reports required by the acts, regulations, and directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such acts, regulations, and instructions. Where any information required from a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor must certify to TxDOT or the FHWA, as

appropriate, and must set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this Contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding payments to the contractor under the Contract until the contractor complies; and/or

(b) cancelling, terminating, or suspending a Contract, in whole or in part.

(6) Incorporation of Provisions: The contractor must include the provisions of paragraphs (i) through (vi) in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the acts, the regulations and directives issued pursuant thereto. The contractor must take action with respect to any Subcontract or procurement as TxDOT or the FHWA may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, that if the contractor becomes involved in litigation with, or is threatened with litigation by, a Subcontractor or supplier because of such direction, the contractor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

d) Vendor agrees to comply with the provisions of Appendix A attached hereto, which are incorporated by reference and made a part hereof.

ARTICLE XI. DISPUTES

Section XI.01 INFORMAL MEETINGS.

Vendor and TxDOT agree to meet as needed to implement the Contract and to make a good faith attempt to informally resolve any disputes.

Section XI.02 DISPUTE RESOLUTION.

Vendor must use the dispute resolution process provided for in Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2 to attempt to resolve disputes arising under the Contract. If Vendor's claim for breach of Contract cannot be resolved informally with TxDOT, Vendor must submit the claim to the negotiation process provided in Chapter 2260. Any informal resolution efforts will in no way modify the requirements or toll any notice periods under Chapter 2260 and 43 TAC §§9.1 and 9.2. Compliance with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.The contested case process provided in Chapter 2260 is Vendor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by TxDOT. The pendency of a Contract claim or dispute does not authorize Vendor's suspension of performance or otherwise excuse Vendor from performing its obligations under this Contract.

ARTICLE XII. TERMINATION AND DEFAULT

Section XII.01 DEFAULT.

a) Vendor will be in default under this Contract if:

(1) Vendor fails to comply with any of Vendor's obligations under this Contract.

(2) Vendor otherwise breaches any term or condition of this Contract; or

(3) Any representation, warranty, covenant, or certification made by Vendor in the Response or in this Contract: (a) was untrue or inaccurate at the time it was made, (b) becomes untrue or inaccurate at any time during the Contract Term, or (c) is otherwise breached by Vendor. All representations, warranties, or certifications made by Vendor in its Response are hereby incorporated into this Contract by reference solely for the purpose of this provision.

b) Any occurrence described in subsections (a)(i) or (ii) above shall be an "Event of Default," regardless of whether the condition is later corrected or cured.

c) Upon an Event of Default, TxDOT may:

(1) terminate all or part of this Contract by giving Vendor written notice.

(2) purchase the Goods or Services elsewhere and charge the full amount of any additional cost incurred by TxDOT, including shipping or delivery fees, to Vendor.

(3) proceed by appropriate court action to enforce the provisions of the Contract; and/or

(4) exercise any other right, remedy, or privilege which may be available to it under law, equity, or this Contract.

d) The exercise of any of the remedies other than termination will not independently constitute a termination of the Contract, and TxDOT is not required to terminate the Contract to exercise any other remedy.

e) Vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of its remedies. The remedies listed above and elsewhere in this Contract are not exclusive. Failure to exercise a remedy, option, right, or power or to insist at any time upon the strict performance of any provision of the Contract shall not constitute a waiver by TxDOT.

Section XII.02 FORCE MAJEURE.

a) TxDOT may, at its sole discretion, grant relief for time only from performance of the Contract if Vendor is prevented from performance by an act of war, act of God, fire, explosion, earthquake, hurricane, flood, pandemic, epidemic, or other unavoidable cause not attributable to the fault or negligence of Vendor (any such event or cause referred to herein as "Force Majeure").

b) To obtain relief based on Force Majeure, Vendor must file a written request with TxDOT describing the events, dates, and effect of the events on Vendor's ability to perform its obligations under the Contract. Vendor must inform TxDOT in writing within three (3) Business Days of the existence of such Force Majeure; failure to do so will waive the right to seek relief under this section. Upon an event of Force Majeure, Vendor must use commercially reasonable efforts to commence performance whenever and to whatever extent possible without

delay. An event of Force Majeure does not excuse Vendor from any obligation under the Contract unless TxDOT grants relief in writing in response to a request for relief under this section.

Section XII.03 TERMINATION FOR CONVENIENCE.

TxDOT may terminate this Contract at any time in whole or in part without cost or penalty by providing at least 30 calendar days written notice to Vendor.

Section XII.04 TERMINATION OF CONTRACT.

a) Unless otherwise agreed in writing, Vendor must cease all Work on the effective date of termination set forth in the notice of termination (the "Termination Date").

b) TxDOT will not be liable for any damages arising from or related to the termination of the Contract.

c) Upon termination of the Contract, TxDOT will be liable only for:

(1) payment for any Goods ordered prior to the Termination Date that meet all Contract requirements, and

(2) payment of a prorated portion of the Contract price for Services performed in accordance with all Contract requirements prior to the Termination Date.

d) Vendor must refund the balance of any unused prepaid funds within 10 Business Days of the Termination Date.

Section XII.05 FUNDING.

The Contract is subject to termination or cancellation, without penalty to TxDOT, either in whole or in part, subject to the availability of state funds.

ARTICLE XIII. MISCELLANEOUS

Section XIII.01 BUY TEXAS.

In accordance with Government Code §2155.4441, Vendor agrees that if the Contract includes the provision of Services, then during the performance of the Contract, Vendor

will purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside the state.

Section XIII.02 DISASTER RECOVERY PLAN.

Within five (5) Business Days of a request from TxDOT, Vendor shall provide copies of its most recent business continuity and disaster recovery plans. If a business disruption or disaster occurs, Vendor must implement its business continuity and disaster recovery plans. Vendor is responsible for all costs incurred in executing the plan.

Section XIII.03 NO WAIVER.

Nothing in this Contract shall be construed as a waiver of TxDOT's or the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TxDOT or the state of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TxDOT or the state of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

Section XIII.04 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS.

Vendor has no authority to act for or on behalf of TxDOT or the state of Texas except as expressly provided for in this Contract. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas or TxDOT.

Section XIII.05 USE OF TxDOT NAME AND TRADEMARKS.

Vendor will not use the TxDOT name, abbreviation of the TxDOT name, trade names, and/or trademarks (i.e., logos and seals) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the TxDOT name, abbreviations, trade names, and/or trademarks or any derivation thereof on any consumer goods, products, or services for sale or distribution to the public, without TxDOT's prior written approval.

Section XIII.06 VENUE AND JURISDICTION; APPLICABLE LAW.

The venue of any suit arising out of the Contract is fixed in any court of competent jurisdiction of Travis County, Texas. The Contract shall be governed by and construed in accordance with the laws of the state of Texas, without regard to the conflict of law provisions.

Section XIII.07 ANTITRUST ASSIGNMENT.

Vendor hereby assigns TxDOT all of Vendor's rights, title, and interest in and to all claims and causes of action Vendor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.

Section XIII.08 SEVERABILITY CLAUSE.

In the event any provision of the Contract may later be determined to be invalid, void, or unenforceable, then the remaining provisions of the Contract will remain in full force and effect.

Section XIII.09 TRANSITION.

Upon termination or expiration of the Contract, Vendor must:

a) Promptly return to TxDOT all TxDOT-owned property, materials, documents, or data in the manner specified by TxDOT, and

b) Cooperate fully with TxDOT and any successor vendor to ensure an orderly transition of business, including the transfer of records, data, and other materials necessary to continue the Work without interruption.

Section XIII.10 THIRD-PARTY BENEFICIARIES.

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assignees, and no other person will have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

ARTICLE XIV. BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

Section XIV.01 BINDING EFFECT.

Vendor binds itself, its respective successors, and assignees to the faithful performance of the Contract.

Section XIV.02 SURVIVAL OF OBLIGATIONS.

Expiration or termination of the Contract will not release Vendor from any liabilities or obligations set forth in the Contract or in any work authorizations issued under the Contract, including any and all provisions regarding warranty, confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice, and fees verification.

APPENDIX A

Nondiscrimination Authorities

During the performance of this Contract, Vendor, for itself, its assignees, and successors in interest (hereinafter referred to in this Appendix as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

Pertinent Nondiscrimination Authorities:

a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat.252) (prohibits discrimination on the basis of race, color, national origin) and 49 CFR Part 21.

b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).

c) Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex).

d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.§ 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27.

e) Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794(d), 36 C.F.R. § 1194.1, and the rules adopted in Title 1, Texas Administrative Code, Chapter 213, as they apply to electronic and information technology, including computer hardware and software, websites, phone systems, and copiers.

f) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age).

g) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are federally funded or not).

h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.

i) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).

j) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681, et seq.).